

STATE OF MICHIGAN
COURT OF APPEALS

In re OSMOND, Minors.

UNPUBLISHED
April 19, 2016

No. 328887
Livingston Circuit Court
Family Division
LC No. 13-014413-NA

Before: TALBOT, C.J., and HOEKSTRA and SHAPIRO, JJ.

PER CURIAM.

Respondent-father appeals as of right the order terminating his parental rights to his six minor children under MCL 712A.19b(3)(c)(i) (conditions leading to adjudication continue to exist), (g) (failure to provide proper care and custody), and (j) (reasonable likelihood of harm to the children if returned to the parent).¹ Because the trial court did not clearly err by terminating respondent's parental rights, we affirm.

I. FACTS

Respondent and his wife are the parents of six children, currently ranging in age from 8 to 16. Child Protective Services (CPS) first became involved with the family in 2012 when it was reported that the couple's developmentally challenged daughter was being neglected. The situation was addressed and the parents were offered information about services for special-needs children.

In March of 2013, the court exercised jurisdiction over the children in response to a petition alleging that the parents went on a several-day drinking binge, staying in their bedroom, drinking a fifth of vodka a day, and leaving the two oldest children to take care of their younger siblings. The parents' behavior came to light when the children began texting their maternal grandmother and a maternal aunt to ask for help. Upon authorizing the petition, in light of allegations of domestic violence perpetrated by respondent against the children's mother, the court ordered respondent out of the home but with parenting-time at the discretion of petitioner, and released the children to their mother on the condition that her own mother or some other

¹ The trial court also terminated the parental rights of the children's mother, but she is not participating in this appeal.

approved person reside in the home to provide supervision and ensure the children's safety. The parents participated in service plans that included counseling, drug screens, and Alcoholic Anonymous meetings. Respondent was allowed to return home in June of 2013. The court terminated its jurisdiction in January of 2014.

However, it soon became apparent that the parents' problems with substance abuse and domestic violence had not been resolved. Although unknown to petitioner at the time, the parents renewed their use of alcohol and the children spent three days at a friend's house because their parents were unable to provide care. Then, in February, respondent pushed the children's mother and raised his fist at one of his sons who attempted to intervene. Respondent later admitted to alcohol and heroin use during this time, which interfered with his ability to care for the children, and to acts of domestic violence against the children's mother, perpetrated in front of the children.

Eventually, in March of 2014, the children were removed from the home after one of the children texted a picture to a maternal aunt of syringes and a baggie of what appeared to be heroin that she found on her parents' bathroom counter. After the aunt reported the matter to CPS, the child told petitioner that her parents had been drinking and doing "insulin shot things," that they stashed bottles of vodka in "weird places" in the house, that they had confined themselves to their room, that they were in a state where they could not be awakened by the children, and that the child "can't take it anymore." Further investigation resulted in three amended petitions, which reported episodes of binge drinking and of respondent's alcohol-fueled violence against the children's mother. One of the amended petitions reported that, on a day they had been scheduled to visit their children and celebrate the birthday of one of them, respondent-parents were instead admitted to a hospital for detoxification.

Respondents admitted sufficient parts of the petitions to support the trial court's assumption of jurisdiction, at which time the children were placed in foster care. The court ordered respondent to submit to a psychological evaluation, to abstain from alcohol, and to participate in a domestic-violence intervention program as well as parenting skills classes. The parents were permitted supervised parenting time.

Respondent participated in services including hospital inpatient and outpatient programs, AA meetings, drug screens, psychological evaluations, and a domestic-abuse program. However, in July of 2014, respondent consumed alcohol, assaulted the children's mother, and was arrested the following day for operating a vehicle while impaired. Respondent pleaded guilty to two counts of aggravated domestic violence, and to driving under the influence, for which he was ordered to serve terms of probation. As part of his probation, respondent was ordered not to have contact with the children's mother.

After this most recent relapse, respondent continued to participate in services and he provided clean drug and alcohol screens. At a permanency planning hearing in October 2014, petitioner recommended allowing the parents three additional months to comply with their agency agreements, particularly as concerned drug screens. At some point, having come to the conclusion that his relationship with the children's mother was "toxic," respondent filed for divorce, but his complaint was later dismissed without prejudice over a problem with the service of process.

Respondent's apparent progress was noted and, at a permanency planning in January 2015, petitioner asked the referee to give respondent three additional months to demonstrate progress with his service plan. The children's lawyer-guardian ad litem agreed, stating that respondent's compliance with services suggested that the children could be released to his care once he had a little more time "to get his ducks in a row." The referee recommended that respondent be given unsupervised parenting time at petitioner's discretion, but also stated that respondent should be given a substance-abuse assessment.

However, despite respondent's apparent progress, it later came to light that the children's mother was living in respondent's apartment at the time of the January 2015 hearing, in violation of the no contact order. Indeed, on the evening of the January 2015 permanency planning hearing, after a parenting visit, respondent consumed alcohol with the children's mother until respondent ended up in the hospital with a blood alcohol level of 0.345. As a result of this incident, respondent was found in violation of his probation and sentenced to serve one year in jail. While in jail, and despite still being under a no-contact order, respondent used other inmates' personal identification numbers to telephone the children's mother several times.

Petitioner filed a supplemental petition seeking to terminate both parents' parental rights. Respondent opposed termination, claiming that he should be given another opportunity to maintain sobriety and care for his children. He asserted that, despite his repeated relapses, he had "learned a lot" and begun to fully recognize that he was an alcoholic. In addition, he blamed his "toxic" relationship with the children's mother for many of his problems and, to solve this issue, he testified that he had decided to end his marriage to her. Respondent testified that he had been sober for five months while in jail and that he "like[d] being sober." Given time, respondent believed that he could achieve a "happy healthy sober life" for his children.

Despite respondent's testimony that he could improve, the trial court found that statutory grounds for termination had been proven by clear and convincing evidence under MCL 712A.19b(3)(c)(i), (g), and (j); and the court concluded that termination was in the children's best interests. Having found statutory grounds for termination and having concluded that termination was in the children's best interests, the trial court terminated respondent's parental rights. MCL 712A.19b(5). Respondent now appeals as of right.

II. ANALYSIS

Respondent contends on appeal that the trial court erred in finding that the statutory grounds for termination had been met and that termination was in the children's best interests. In particular, respondent emphasizes that all the cited statutory grounds for termination—MCL 712A.19b(3)(c)(i), (g), and (j)—contain a forward-looking element, which requires clear and convincing evidence that respondent will not be able to care for his children in a reasonable amount of time. Respondent maintains that his past failings cannot be used to presume a future inability to provide care, that he can and has benefited from services, and that he will be able to provide care in the future. Regarding the children's best interests, respondent emphasizes his strong bond with the children, his parenting skills, and the importance of reuniting the children on a permanent basis. Considering these factors, respondent claims that the children's best interests were not served by termination of his parental rights.

A. STANDARD OF REVIEW

A trial court's findings that a statutory ground for termination has been established, and that termination is in the best interests of the children, are reviewed for clear error. *In re Trejo Minors*, 462 Mich 341, 356-357; 612 NW2d 407 (2000). See also MCR 3.977(K). A finding is clearly erroneous if, although there is evidence to support it, this Court is left with a definite and firm conviction that a mistake has been made. *In re Mason*, 486 Mich 142, 152; 782 NW2d 747 (2010). “[R]egard is to be given to the special opportunity of the trial court to judge the credibility of the witnesses who appeared before it.” *In re Ellis*, 294 Mich App 30, 33; 817 NW2d 111 (2011). See also MCR 2.613(C).

B. STATUTORY GROUNDS FOR TERMINATION

The trial court found that petitioner had established grounds for termination under MCL 712A.19b(3)(c)(i), (g), and (j). Under MCL 712A.19b(3)(c)(i), the court may terminate a parent's rights if 182 or more days have passed since issuance of an initial dispositional order and the court finds by clear and convincing evidence that “[t]he conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.” “This statutory ground exists when the conditions that brought the children into foster care continue to exist despite ‘time to make changes and the opportunity to take advantage of a variety of services.’” *In re White*, 303 Mich App 701, 710; 846 NW2d 61 (2014) (citation omitted). In other words, a parent's failure to comply with, and benefit from, services can support a trial court's finding that termination is proper under MCL 712A.19b(3)(c)(i). See, e.g., *In re Trejo*, 462 Mich at 358-359; *In re Frey*, 297 Mich App 242, 246; 824 NW2d 569 (2012).

In this case, the primary conditions leading to respondent's adjudication were his issues relating to alcohol abuse and domestic violence, both of which impacted his ability to provide proper care and custody for his children. Although respondent had the opportunity to participate in numerous services to address those issues, he repeatedly relapsed, most significantly in July 2014. He again participated in services, prompting petitioner and the children's advocate to express optimism over his apparent progress, twice urging the court to give respondent more time to demonstrate his progress. Nevertheless, any apparent progress once again proved short lived. On the day he received unsupervised parenting time, after visiting the children, respondent chose to drink to the point of a bodily alcohol level four times higher than the legal limit for driving,² which well contradicted his assertions that he had by then internalized what alcoholism had done to him and the children, or that he had otherwise benefited sufficiently from services.

Despite respondent's repeated relapses, respondent urges this Court to adopt the optimism expressed by petitioner and the children's advocate ahead of his January 2015 relapse, but in doing so he overlooks the less favorable parts of the record and he ignores the trial court's

² See MCL 257.625(1)(b).

role in judging witness credibility and weighing the evidence. The record shows that respondent acknowledged having received the services he needed to stop drinking and to otherwise consistently be a good father, and he was on the verge of getting his children back, yet he still chose to once again binge-drink to where he needed medical treatment. Contrary to respondent's description of events, this was not a onetime setback in an otherwise stellar record, but merely the most recent of several significant relapses over the course of two years despite numerous services and opportunities to improve. Moreover, although respondent continued to participate in services while incarcerated after his January 2015 relapse, his history shows that, when free to make a choice about drinking, he has repeatedly elected to do so in great excess. Stated differently, while respondent claims that he has improved, and can improve further, his actions, and his repeated return to the same pattern of harmful behavior during the pendency of this case, speak louder than his words. A parent cannot merely go through the motions of participating in services; a parent also has a responsibility to comply with and benefit from participation in services. See *In re TK*, 306 Mich App 698, 711; 859 NW2d 208 (2014); *In re Frey*, 297 Mich App at 246. Given respondent's cyclical history of drinking, services, and relapse, it cannot be said that respondent has sufficiently benefited from services and it is impossible to predict when, or even if, respondent will be in a position to provide a safe home for his children. Certainly, it does not appear that he will be able to do so in a reasonable time given the children's ages.

In sum, by repeatedly engaging in the same destructive behavior, despite numerous services over the course of almost two years, respondent has ultimately shown a failure to benefit from services, and this failure to benefit from services supports the trial court's conclusion that the conditions which led to adjudication continue to exist and that they will not be rectified in a reasonable time. See *In re White*, 303 Mich App at 710. For these reasons, we conclude that the trial court did not clearly err by finding clear and convincing evidence that termination was warranted under MCL 712A.19b(3)(c)(i). We further conclude that respondent's persistent failure to gain control over his alcoholism, which significantly impacted his ability to provide proper care for his children, supported the trial court findings under MCL 712A.19b(3)(g) and (j).³

C. BEST INTERESTS

If the trial court finds "that there are grounds for termination of parental rights and that termination of parental rights is in the child's best interests, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made." MCL 712A.19b(5). The court must consider whether the record as a whole proves by

³ Because the failure to rectify the conditions leading to adjudication, i.e., substance abuse and domestic violence, bears so heavily on respondent's failure to provide proper care and custody under § 19b(3)(g), and the likelihood that the children would suffer emotional harm if returned to him under § 19b(3)(j), see *In re White*, 303 Mich App at 716, we see no need to set forth largely duplicative analyses in relation to the latter two termination factors. This is especially so given that "[o]nly one statutory ground for termination need be established." *In re Olive/Metts Minors*, 297 Mich App 35, 41; 823 NW2d 144 (2012).

a preponderance of the evidence that termination is in the best interests of the child. *In re Moss*, 301 Mich App 76, 83; 836 NW2d 182 (2013). In making this determination, the focus is on the child, not the parent. *Id.* at 88. “In deciding whether termination is in the child’s best interest, the court may consider the child’s bond to the parent, the parent’s parenting ability, the child’s need for permanency, stability, and finality, and the advantages of a foster home over the parent’s home.” *In re Olive/Metts Minors*, 297 Mich App at 41-42 (citations omitted). Other relevant factors include, “a parent’s history of domestic violence, the parent’s compliance with his or her case service plan, the parent’s visitation history with the child, the children’s well-being while in care, and the possibility of adoption.” *In re White*, 303 Mich App at 714. Typically it “will be in the best interests of each child to keep brothers and sisters together,” but ultimately when deciding whether to terminate parental rights the best interests of each individual child must control. *In re Olive/Metts Minors*, 297 Mich App at 42 (citation omitted).

In the instant case, the court acknowledged the “children are clearly bonded to their parents.” However, the court described this bond as “toxic in nature,” noting that the history of the case “demonstrates that the children show much more worry and concern for the parents than the converse.” The court further noted that the children faced a risk of harm if returned to the parents’ care, stating that a bond “will not protect the children from dangerous parenting practices inherent in substance abuse and domestic violence, or make sure they receive proper care.” Given these circumstances, the court reasonably concluded that “a bond alone does not provide justification to maintain the relationship.” The court also addressed the question of respondent’s parenting skills, opining that both respondent and the children’s mother “for the most part have displayed appropriate parenting skills during supervised visits,” but that their “continued problems with substance abuse and instability strongly support the contention that they cannot provide a safe and substance-free home.” In analyzing the children’s best interests, the trial court also recognized that the children were divided among two foster care placements, and described the children as being in a “difficult situation.” However, given the amount of time that the children had already spent in foster care, and considering the children’s need for permanency, the court concluded that the children’s best interests would not be served by allowing the children to spend more time in foster care to see “if” their parents could be “rehabilitated.” In this respect, the court highlighted the parents’ demonstrated failure to benefit from services over the course of two years, ultimately finding that the children were in need of a “stable and safe home” which the parents had proved unable to provide.

In short, the trial court considered the issues raised by respondent on appeal—the bond between respondent and the children, the children’s separation from each other, and respondent’s parenting skills—but nonetheless found that the children’s best interests were served by termination of respondent’s parental rights in light of respondent’s demonstrated inability to provide a safe home, particularly given the dangers posed by respondent’s substance abuse and domestic violence. Given the evidence presented, we see nothing clearly erroneous in the trial court’s findings. The record as a whole supports the trial court’s conclusion on the preponderance of the evidence that termination was in the best interests of the children. See *In re Moss*, 301 Mich App at 83. Consequently, the trial court did not clearly err by terminating respondent’s parental rights. MCL 712A.19b(5).

Affirmed.

/s/ Michael J. Talbot
/s/ Joel P. Hoekstra
/s/ Douglas B. Shapiro